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Filing date: **02/02/2022**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91273569
Party	Plaintiff DAMM, LLC
Correspondence address	PAUL DIETZ DIETZ LAW OFFICE LLC 4975 WILDERNESS LAKE CIR ELKO NEW MARKET, MN 55020 UNITED STATES Primary email: paul@dietzlawoffice.com 9522012008
Submission	Motion for Default Judgment
Filer's name	Paul Dietz
Filer's email	paul@dietzlawoffice.com
Signature	/Paul Dietz/
Date	02/02/2022
Attachments	Motion for default judgment.pdf(94460 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No.: 90/453,221

For the mark: Hammer-Schlagen

Published in the Official Gazette of August 24, 2021

DAMM, LLC

Opposer,

Opposition No. 91/273,569

WRB, Inc.

Applicant.

**OPPOSER'S MOTION FOR DEFAULT JUDGMENT AND ACCOMPANYING
MEMORANDUM OF LAW**

Opposer, DAMM LLC, by its undersigned counsel and pursuant to Fed.R.Civ.P. 55 and 37 CFR §2.106(a), hereby moves the Board to enter default judgment against Applicant. Applicant does not join Opposer in this motion.

I. Facts Relevant to This Motion For Default Judgment

Applicant has failed to file an Answer during the time allowed therefor and its motion for extension of time is not based upon good cause shown. Further, Opposer, DAMM LLC ("Opposer" or "DAMM"), believes that there are unusual circumstances that warrant the entry of default judgment in this opposition. This application is based upon a blatantly false declaration of use of the designated goods in commerce under the applied for mark.

Applicant filed its "goods based" application on January 7, 2021. Applicant then contacted Opposer and demanded that it stop selling a combination of a hammer, nail and wood product. In response, Opposer indicated it would oppose the present application if it was published for opposition. The day before this application was published for opposition applicant filed a lawsuit against Opposer and two individuals and their wives. The civil action asserts service mark registrations against Opposer. A few days later Applicant filed an emergency motion for preliminary injunction. That motion has been denied (see Opposer's Response in Opposition to Applicant's Motion to Suspend, Exhibit B).

Rather than answering to the substance of this opposition, applicant seeks to avoid the facts and filed a motion to suspend this proceeding. Aware of the deadline to file an Answer in this matter, applicant has not shown that it worked diligently to prepare an Answer, but instead chose to seek an extension of time to file an Answer because a motion to suspend is pending.

Applicant's request for suspension, and attempts to avoid filing an answer in this matter are mere tactical gamesmanship seeking to gain an advantage on burdens of proof and contestability of a mark. Applicant has not used the applied for mark in interstate commerce on the designated goods since 1999 - the date alleged by Applicant (see Opposer's response to applicant's motion to suspend, Exhibit A).

Opposer respectfully requests that the Board deny Applicant WRB Inc.'s motion for extension of time and enter default judgment of the relief sought against Applicant. The Court recently denied WRB's motion for a preliminary injunction, finding that WRB was not likely to succeed on the merits in the civil action (see attached Exhibit B). Suspending this opposition or allowing applicant to continue to "play the system" will not serve the public's interests.

II. CONCLUSION

In circumstances where an applicant fails to file an answer during the time allowed therefor, the Board may issue a notice of default or upon motion may enter a default judgment. Applicant has engaged in delay tactics in an attempt to avoid issues

of misrepresentations made to the Trademark Office, genericness and descriptiveness of the applied for mark, and likelihood of confusion between Opposer's mark and Applicant's mark. Opposer respectfully requests entry of default judgment against applicant in accordance with Fed.R.Civ.P. 55.

Dated: February 2, 2022

Respectfully Submitted

s/ Paul Dietz

Paul T. Dietz (#237838)

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ATTORNEY FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2022 I caused to have electronically filed the foregoing with the ESTTA System which in turn automatically generates a Notice of Electronic Filing (NEF) to all parties in the case. I further certify that a copy of the Motion for Default Judgment was sent via email to applicant as follows:

WRB, INC.
James Martin, CEO
5865 Neal Ave N / #113
Stillwater, MN 55082
trademark@hammerschlagen.com

Dated: February 2, 2022

Respectfully Submitted,

s/ Paul Dietz

Paul T. Dietz (#237838)
Attorney for Defendants

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